

REMARKS

This application has been reviewed in light of the Office Action dated February 2, 2009. Claims 36 and 42, both of which are in independent form, are presented for examination. Claim 36 has been amended to define still more clearly what Applicant regards as his invention. Claim 42 has been added to provide Applicant with a more complete scope of protection. Claims 37-41 have been canceled without prejudice or disclaimer of subject matter, and will not be mentioned further. Favorable reconsideration is requested.

In the outstanding Office Action, Claim 36 was rejected for obviousness-type double patenting, over Claims 1-3 of U.S. Patent 6,728,956 (Ono). In addition, Claim 36 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,440,632 (Bacon et al.).

As discussed in the specification, a program used for system start-up, such as firmware for obtaining executing environments for application programs, is generally stored in a nonvolatile memory of the system and may need to be upgraded from time to time. It is important to complete each upgrade or continue using the version before the upgrade, or the system will not be able to start up.

The present invention has been made to achieve this objective in a user-interactive environment. It relates to a system where a user may use an input portion (a keyboard, etc.; 611 in Fig. 6) to, for example, guide an upgrade by designating an upgrade version number, and use a display device (a screen, etc.; 613 in Fig. 6) to see the status of various transactions ("on program updating," etc.). To ensure successful completion of an upgrade, the system avoids user interference during the download of an upgraded version

by disabling input from a user and further output to a user – inhibiting the display of additional images to a user (S806 in Fig. 8; no change of display during download between S808 and S904 in Figs 8 and 9). It also validates the downloaded content when the download is supposedly complete.

Independent Claim 36 is directed to an information processing apparatus operating on the basis of a program stored in program storage means. The apparatus comprises receiving means, for receiving broadcast waves containing an update program which executes control of the apparatus in place of the stored program in the storage means, and update means, for updating the stored program with the update program. Display control means display a message image for providing a notification to a user on a screen. In addition, there are provided executing means, for receiving an operating instruction to operate the apparatus from an input unit and for operating the apparatus according to the received operating instruction. Control means control the executing means so as not to operate the apparatus according to the received operating instruction while the update means is updating the program, and control the display control means so as to display the message image on the screen, for notifying the user that the operating instruction is not being executed while the update means is updating the program.¹

Applicant submits that the added recitations in Claim 36 are not present in the claims of U.S. Patent 6,728,956, and therefore requests that the double-patenting rejection be withdrawn.

^{1/} The language added to Claim 36 by this Amendment is supported at least by S806 and S807 of Fig. 8. It is to be understood of course that the scope of the claims is not limited by the details of this or any other embodiment that may be referred to.

With regard to the prior-art rejection, Applicant points to the recitations in Claim 36 according to which the operating instruction to operate the information processing apparatus is received, and the apparatus is operated according to that received operating instruction, but that the apparatus is not operated by the operating instruction while the stored program is being updated.

Bacon has been adequately discussed in previous papers, and Applicant believes it sufficient to note here that in the *Bacon* system a subscriber terminal supplies RF output to a television receiver and uses new software; it is not believed that this in any way suggests the mentioned features recited in Claim 36.

Independent Claim 42 is a method claim corresponding to apparatus Claim 36, and is believed to be patentable for at least the same reasons as discussed above in connection with Claim 36.

A review of the other art of record has failed to reveal anything that, in Applicant's opinion, would remedy the deficiencies of the art discussed above, as applied against the claims herein. Therefore, those claims are respectfully submitted to be patentable over the art of record.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and allowance of the present application.

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

/Leonard P. Diana/

Leonard P. Diana

Attorney for Applicant

Registration No. 29,296

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

FCIS, WS 3022875v1